GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Messrs. P. V. S. Beedies (P) Ltd., Kodialbail, Mangalore-3.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. ..../66-67, dated 23rd November 1966, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 22nd day of November 1966.

Present :

SRI P. T. KADKOL, B.SC., LL.B.,

Presiding Officer.

REFERENCE No. 11 OF 1966

Between

Workmen represented by the Secretary, Beedi Mazdoor Sangh, Felix Pai Bazaar, Mangalore-1.

I Party

and

The Management, Messrs, P.V.S. Beedies (P.) Ltd., Kodailbail, Mangalore-3.

II Party

Reference : Government Order No. LMA 570 LLD 65, dated 22nd February 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the Workmen and the Management of Messrs, P. V. S. Beedies (P.) Ltd., Mangalore, have referred it for adjudication to this court under Section 10 (1) (c) of the Industrial

Disputes Act, 1947, by their Order No. LMA 570 LLD 65, dated 22nd February 1966, setting out the following points of dispute for adjudication :—

> "Are the Management of M/s. P.V.S. Beedies (P) Limited, Mangalore-3, justified in terminating the services of Smt. A. Sharada on account of and on her marriage on 28th December 1964 and if not whether she is eligible to reinstatement with continuity of service and back wages or any other relief ?"

2. The cause of the aggrieved worker has been sponsored by the "Beedi Mazdoor Sangh, Mangalore", which is a registered Trade Union. This Union as representing the workers is the first party and the management of P.V.S. Beedies (P) Ltd., Mangalore is the second party in this proceeding. Mr. Tukaram Pai has appeared for the Union and Mr. Shashidhar Rao has appeared for the Management.

3. The Second Party runs a Beedi Manufacturing Factory at Mangalore. It has employed many workers, some of whom are ladies. The aggrieved worker Smt. A. Sharada, was working in the Labelling section of this Beedi Factory. When she entered service some time in 1961, she was not married. When continuing in service, she married on or about 28th December 1964. As her marriage was to take place on or about that day, she applied for paid leave of 15 days, on the ground that her marriage was to take place. The Management rejected the leave application intimating her that as per conditions of service, her employment stood terminated automatically immediately on her getting married. Then followed some correspondence between the aggrieved worker and her Union on the one hand and the Management on the other. After marriage, when Smt. Sharada presented herself for duty, she was told that her services stood terminated. She was not given any work. Thereafter, the Union took up her cause. Conciliation failed. Hence the Government have referred this dispute for adjudication to this Court.

4. After setting out the above facts in the statement of claims, the Union has contended that the termination of the services of Smt. Sharada is unjust and illegal and prayed that the Management be directed to reinstate her with continuity of service and back wages.

5. The Contentions raised by the Management in its statement of objections are these :—

> The Management has been employing lady workers since recently, at Mangalore, as an experimental measure. The lady workers are specifically told at the time of appoint-

ment that the service is purely temporary and it ceases automatically on their getting married. The lady workers are employed only in the labelling section. Wages are paid to them at the rate fixed by Government under the Minimum Wages Act. In the interest of efficient operation and its economic interest, the Management found it necessary not to employ married workmen. This is neither unfair nor unjust. Smt. Sharada accepted service being fully aware of these conditions attached to her service. Another lady worker, who got married, was also discharged. It is denied that this condition of discharge on marriage is bad in law or militates against individual rights. The Management has introduced this practice *bona fide* and in the interest of its business. It is true that Smt. Sharada's services were terminated because she married. There is no malice or ill-will against Smt. Sharada. Hence this Reference deserves to be rejected;

6. On these pleadings and after hearing the statements of the case made by the learned representatives on both sides, the following additional issues have been framed and set down for hearing:—

(1) Does the Second Party prove that it was one of the conditions of employment that the lady workers would be discharged from service on getting married?

(2) Does it prove that the discharge of a lady worker on her getting married is necessary in the interests of efficient operation and its economic interest?

(3) Is the condition valid or is it necessary to abrogate it in case it is proved to exist, in view of the decision of the Supreme Court reported in 1966 (I) LLJ 417?

Parties were directed to lead evidence on all these issues. They have done so. The Management has examined its Managing Director Mr. Madhusudan Kushe (M.W.1) and the Union has examined Smt. Sharada (W.W. 1). This is all the evidence in the case.

7. The first question arising for decision is whether the Management proves that the lady workers in the labelling section and particularly Smt. Sharada, were appointed subject to two conditions, *viz.*, (1) that their services were purely temporary and (2) that their services would stand terminated authomatically on their getting married. The only evidence led by the Management on this point is the testimony of Madhusudan (M. W. 1), who was the Managing Director of the concern in 1961 and continues to hold that post even now. He has sworn that the Management decided to employ lady workers in the labelling section for the first time in 1961 and he himself recruited some lady workers then. He has

sworn that, he definitely told the abovementioned two conditions to all the lady workers recruited by him and they accepted these two conditions and then joined service. There is no written record to show that such conditions for recruitment were imposed and they were accepted by the lady workers. The imposition of the conditions and their acceptance by the lady workers, is all said to be oral. Madhusudan (M.W. 1) has not stated specifically that he informed of the existence of these two conditions specifically to Smt. Sharada and she joined the service, after accepting these two conditions. None of the other lady workers appointed in 1961, have been examined by the Management to prove that they had been made aware of the existence of these two conditions and they had accepted them and thereafter were employed by the Management. Smt. Sharada has sworn that no such conditions were imposed when she was taken in service. On the other hand, Madhusudan has himself admitted that even to this day he has in his service a lady worker who is a married woman and she is one of the lady workers recruited by himself in the first batch in 1961. He has, of course, stated that, he did not know that she was a married woman when he appointed her, but learnt about it, when she became pregnant. But, even then, she is continuing in service. There is also another lady working in the labelling section now. She is also a married woman. Madhusudan has stated that he came to know that she is a married woman after he recruited her. He has, however, added hastily, that he has come to know that she has divorced her husband. This fact, if true, should not make any difference for the application of the conditions, if at all they existed. Madhusudan has also admitted that these lady workers in the labelling section have been admitted to the benefits of the Provident Fund Scheme by virtue of an agreement with the Beedi Mazdoor Sangh. Considering, therefore, all the facts and circumstances, I am of opinion that the Management has failed to prove the existence of the two conditions or either of them. I would, therefore, record my finding on the first issue against the Management.

8. In view of my finding on the first issue, there would really be no need to record any findings on the second and third issues. Even then, I proceed to record them. I think that the facts in this case are very similar to those obtaining in Bombay Labour Union *Vs.* International Franchises (P) Ltd., reported in 1966 (1) LLJ 417. It is a decision of the Supreme Court. The Respondent in that case was a Pharmaceutical concern. There was a rule in force in that concern according to which, if a lady worker go married, her services were treated as authomatically terminated. The lady workers against whom this rule was operating were doing the work of packing, labelling, putting in phials, etc. The question that arose for decision before the Supreme Court was whether the rule should be upheld or abrogated. Two points were urged before the Supreme Court. The first

was that the employer has the right to impose such conditions as he deems fit on the persons he wanted to employ. The Second was that the existence of such a condition was necessary because in that department, the workers had to work in teams; it required regular attendance; and there was greater absenteeism among married women. It was also urged that the existence and continuance of this Rule was necessary in the interest of efficient operation and economic interest of the employer. Negativing all these contentions, the Supreme Court has observed :—

> "All that need be said in this connection is that it is too late in the day now to stress the absolute freedom of an employer to impose any conditions which he likes on his labour. It is always open to industrial adjudication to consider the questions of employment of labour and vary them if it is found necessary, unless an employer can justify an extraordinary condition like this by reasons which carry conviction ..... We are, therefore, of opinion that such a rule should be abrogated in the interest of social justice"

9. The principles laid down by the Supreme Court as above, apply with equal force, in the present case. In the reported case, the rule of termination of service on marriage was actually existing. In this case, the rule is not even proved to be existing. Madhusudan has stated that he has discharged one lady worker by name Vasanthi, on the ground of her marriage. This fact also has not been satisfactorily proved. The suggestion made in the cross-examination of Smt. Sharada indicates that Vasanthi also has approached the Union. Smt. Sharada has stated that Vasanthi left her service, on marriage, of her own acord. Be it, what it may, it would not justify the action of the Management, even if true. Madhusudan has admitted that, near his house, there is another Beedi Factory, by name Prakash Beedi Factory wherein also lady workers have been appointed in the labelling section. He has, however, added that he does not know if those lady workers are married women or unmarried women.

10. In his examination-in-chief (Para 4), Madhusudan has stated the reasons for imposing the conditions on the lady workers. He has stated :—

> "The condition regarding marriage was put because on marriage there would be no regularity in the attendance of lady workers. I also thought that the work in tobacco industry would impair the health of pregnant ladies when carrying the "chalanees" from the stacking place to the work place."

11. Madhusudan has not obtained any expert opinion on the question whether the health of pregnant ladies would be impaired when carrying the chalanees from the stacking place to the work place. He has relied upon his opinion, which may or many not be correct. This cannot therefore, be accepted as a convincing reason for the imposition or enforcement of such a condition. The work of these lady workers are stated by Madhusudan is :—

> " These female workers are required to take the finished beedies from the kiln in which they are put for drawing away all the moisture and then start bundling and packing, which together are called " Labelling ".

He has also stated that in one 'Chalani' there would be about 4 to $4\frac{1}{2}$ thousand Beedies.

12. From what Madhusudan has stated, it cannot at all be said that the work the ladies are required to do in the labelling section is arduous. As regards the irregularity in attendance apprehended on the part of married ladies, it is not at all well founded. This aspect has also been considered by the Supreme Court and negatived. It cannot also be understood how the continuance in service of married ladies would affect the economic interest or efficient operation of the busines of the Management. Hence I record my finding on the second issue in the negative. As regards the third issue, I must say that if it is held to exist, it requires to be abrogated in view of the Supreme Court decis.on.

13. Now coming to the point of dispute referred for adjudication, we find that, admittedly, Smt. Sharada has been discharged on the only ground that she has married. This termination of service is not at all justifiable and she is eligible for reinstatement, for the reasons given by me above, already.

14. Then comes the question of back wages and continuity of service. Smt. Sharada has been discharged by the Management not for any misconduct, but for some reason which according to it was a conditiooon of service, and a breach of which was commited by her. When such a condition is not proved to exist and is liable to be abrogated if does exist, her discharge is clearly illegal. Hence she is entitled to back wages as well as continuity of service.

15. As regards wages, there is some difficulty as Smt. Sharada was neither a daily-rated nor a monthly-rated employee. She was being paid on piece-rate basis. Her wages depended on the work turned out by her. She was discharged on 28th December 1964. Hence it is necessary to find out her average earnings per month. It is, in my opinion, sufficient if the average earnings per month are

calculated on the basis of her earnings for the months of September, October and November 1964. She should be paid back wages at the average rate, so found.

16. In view of these conclusions, I make an Award as under :—

AWARD

The Reference is accepted. The Order passed by the Management of the Second Party against Smt. Sharada is set aside. The Management is directed to reinstate her in her former post,with continuity of service and other atendent and consequential benefits. if any, and pay her back wages at the rate of the average of her monthly earnings in September, October and November 1964 for the period from 28th December 1964 till the date of reinstatement, which should be done within one month from the date of the publication of this Award, in the Mysore Government Gazette. Parties do bear their own costs.

(Sd.) P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

APPENDIX

List of witnesses examined in this case on behalf of—

1st Party :

W.W. 1 Smt. Sharada.

2nd Party :

M.W. 1 Madhusudan Rao.

List of documents admitted in this case on behalf of—

1st Party :

Nil.

2nd Party :

Nil.

(Sd.) P. T. KADKOL.
Presiding Officer,
Labour Court, Bangalore.